

**United States Court of Appeals**  
Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk

November 3, 2010

**NOTICE TO ALL COUNSEL OF RECORD - VIA FACSIMILE**

Case No. 09-12513 - Ezell Gilbert v. United States

Dear Counsel:

Enclosed is an order entered by the court directing that this case be reheard en banc. Under Eleventh Circuit Rule 35, the effect of granting rehearing en banc is to vacate the previous opinion and judgment of this court and to stay the mandate.

You will be notified by subsequent correspondence of the schedule for filing en banc briefs, the issue(s) which the court wishes the parties to focus on in their briefs, and any page limitations on them. We will communicate with you at a later time regarding report time and time limitations on oral argument should this case be designated for oral argument.

Sincerely,

JOHN LEY, CLERK

By: \_\_\_\_\_  
Joyce T. Pope  
Calendar Clerk

:jtp

Enclosure

George Allen Couture (FAX 407-648-6095)  
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Clerk, U.S. District Court (MFL-Tampa)  
Honorable James S. Moody, Jr.

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

\_\_\_\_\_  
No. 09-12513  
\_\_\_\_\_

**FILED  
U.S. COURT OF  
APPEALS  
ELEVENTH CIRCUIT  
November 3, 2010  
JOHN LEY  
CLERK**

EZELL GILBERT,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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On Appeal from the United States District Court for the  
Middle District of Florida  
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(Opinion June 21, 2010, 609 F.3d 1159, 11<sup>th</sup> Cir. 2010)

(November 3, 2010)

BEFORE: DUBINA, Chief Judge, TJOFLAT, EDMONDSON, BLACK, CARNES, BARKETT,  
HULL, MARCUS, PRYOR, and MARTIN, Circuit Judges.\*

BY THE COURT:

A member of this Court in active service having requested a poll on the suggestion of rehearing en banc and a majority of the judges in this Court in active service having voted in favor of granting a rehearing en banc,

IT IS ORDERED that the above cause shall be reheard by this court en banc. The previous panel's opinion is hereby VACATED.

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\*Judge Charles R. Wilson has recused himself and will not participate. Senior United States Circuit Judge James C. Hill has elected to participate in further proceedings in this matter pursuant to 28 U.S.C. § 46(c).